BLANK PAGE

BLANK PAGE

INDEX

	Page
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	2
Summary of argument	7
Argument:	
I. Since the lands were acquired before the time when by completion of levy and assessment the amounts of state taxes had been ascertained, they are not subject to liens for the taxes	8
II. The probate court of Macon County, Alabama, was without jurisdiction to decree that the lands of the United States be sold to pay the taxes	20
Conclusion	22
Appendix A	24
Appendix B	42

CITATIONS

Cases:	
Bannon v. *Burnes*, 39 Fed. 892	10, 16
Belknap v. *Schild*, 161 U. S. 10	21
Board of County Com'rs v. *Central Baptist Church*, 136 Okla. 99	19
Buckhout v. *City of New York*, 176 N. Y. 363	10
City of Laurel v. *Weems*, 100 Miss. 335	18, 19
Clallam County v. *United States*, 263 U. S. 341	11
Cunningham v. *Macon & Brunswick R. R. Co.*, 109 U. S. 446	21
Denver v. *Research Bureau*, 101 Colo. 140	18
Dowdney v. *Mayor, etc., New York City*, 54 N. Y. 186	10
Elyton Land Co. v. *Mayor and Aldermen of Birmingham*, 89 Ala. 477	9
Gaston v. *Reconstruction Finance Corporation*, 237 Ala. 111	12
Gillmor v. *Dale*, 27 Utah 372	10, 18
Goldberg v. *Daniels*, 231 U. S. 218	21
Hagood v. *Southern*, 117 U. S. 52	21
Hallinger v. *Zimmerman*, 63 N. J. Eq. 100	10
Heine v. *The Levee Commissioners*, 19 Wall. 655	12
Kern v. *Towsley*, 45 Barb. 150	10

392811—41——1

Cases—Continued. Page

Laney v. *Proctor*, 236 Ala. 318 ... 12
Lee v. *Osceola Imp. Dist.*, 268 U. S. 643 ... 11
Lewis v. *Burch*, 215 Ala. 20 ... 12
Louisiana v. *Garfield*, 211 U. S. 70 ... 21
McHenry Church v. *McNeal*, 86 Miss. 22 ... 19
Minnesota v. *Hitchcock*, 185 U. S. 373 ... 21
Minnesota v. *United States*, 305 U. S. 382 ... 20
Mullen Benevolent Corp. v. *United States*, 290 U. S. 89 ... 11
Naganab v. *Hitchcock*, 202 U. S. 473 ... 21
New Mexico v. *Lane*, 243 U. S. 52 ... 21
New York v. *Maclay*, 288 U. S. 290 ... 7, 10, 13, 14
Opinions of the Justices, In re, 234 Ala. 358 ... 7, 12
Oregon v. *Hitchcock*, 202 U. S. 60 ... 21
People v. *Commissioners*, 104 U. S. 466 ... 11
People v. *Weaver*, 100 U. S. 539 ... 9
Perry County v. *Railroad Company*, 58 Ala. 546 ... 9
Portland v. *Multnomah County*, 135 Ore. 469 ... 10, 18
Stanley v. *Schwalby*, 162 U. S. 255 ... 21
State v. *Northwestern Tel. Exchange Co.*, 80 Minn. 17 ... 11
State v. *Snohomish County*, 71 Wash. 320 ... 10, 18
State ex rel. Hinson v. *Nickerson*, 99 Neb. 517 ... 18
State of Texas v. *Farmer*, 94 Tex. 232 ... 10
Territory v. *Perrin*, 9 Ariz. 316 ... 10, 16
The People v. *Ladies of Loretto*, 246 Ill. 403 ... 19
The Siren, 7 Wall. 152 ... 20, 22
United States v. *Certain Lands in City of St. Louis, Mo.*, 29 F. Supp. 92 ... 16
United States v. *City of Buffalo*, 54 F. 2d 471, certiorari denied, 285 U. S. 550 ... 11, 16, 19, 22
United States v. *Pierce County*, 193 Fed. 529 ... 11, 16, 17, 18
Van Brocklin v. *State of Tennessee*, 117 U. S. 151 ... 7, 11, 17
Wood v. *McCook Water-Works Co.*, 97 Neb. 215 ... 11

Statutes:

Act of March 2, 1819, c. 47, sec. 6, 3 Stat. 489 ... 11
R. S., sec. 3466, 31 U. S. C. sec. 191 ... 14
Constitution of Alabama, Arts. XIV and XIX ... 2, 4, 13, 39, 40
Alabama General Acts 1935, No. 194, pp. 256–574 ... 2, 3, 4, 5, 7, 8, 9, 11, 12, 19, 24–39

Texts and Miscellaneous:

Berg, *The Status of Taxes Relative to Land Acquired by the United States*, 16 Oregon Law Review, pp. 340–356 (1937) ... 16, 19
3 Cooley, *Taxation* (4th ed. 1924), secs. 1012, 1015, 1043, 1045, 1135, 1232 n. 13 ... 9, 16
48 L. R. A. (N. S.) pp. 708–712 (1914) ... 16

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 12, Original

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF ALABAMA

BRIEF FOR THE UNITED STATES

JURISDICTION

On November 18, 1940, the United States asked leave to file a complaint against the State of Alabama. On November 25, 1940, this Court issued to the State of Alabama its rule to show cause why leave to file should not be granted. On January 6, 1941, the State made return to the rule setting forth objections to maintenance of the proposed action. Thereafter, the United States filed a memorandum in response to the State's return. On January 20, 1941, the Court granted the motion for leave to file the complaint and process was ordered to issue. On March 3, 1941, the State filed its answer.

The jurisdiction of this Court rests on section 233 of the Judicial Code, 28 U. S. C., sec. 341.

QUESTIONS PRESENTED

1. Whether real estate is subject to a lien for state taxes when it is acquired by the United States after the date upon which property is made subject to such a lien by state statute, but before the time when by completion of levy and assessment the amount of taxes is ascertained.

2. Whether a state court has jurisdiction to order the sale of lands belonging to the United States.

STATUTES INVOLVED

The pertinent sections of Alabama General Acts 1935, No. 194, pp. 256–574, and of Articles XIV and XIX of the Constitution of Alabama, are printed as Appendix A (pp. 24–41, *infra*).

STATEMENT

This is a suit to quiet the title of the United States to three tracts of land in Macon County, Alabama, which have been sold to the State of Alabama for unpaid taxes for the tax year 1937, i. e., for the year commencing October 1, 1936.

The determinative facts are undisputed:[1]

---

[1] The procedure for imposition and collection of taxes is prescribed by Alabama General Acts 1935, No. 194, pp. 256–574, the pertinent provisions of which are set forth in Appendix A (pp. 24–39, *infra*). Certain public records, certified copies of which have been filed with the Clerk, disclose how this procedure was applied in respect of the lands here involved. The records relating to tract 1, which was acquired from C. C. and J. E. Bridges, are typical. They are set forth in Appendix B (pp. 41–46, *infra*).

The tax lien statute.—Section 372 of Act No. 194 (p. 566)[2] provides that on the first day of October, when property becomes assessable, the state and county shall have a lien on each and every parcel owned by any taxpayer for the payment of all taxes which may be assessed. It is further provided that the lien may be enforced by foreclosure sale.

The lands involved.—On October 1, 1936, C. C. and J. E. Bridges conveyed to the United States the tract first described in paragraph 1 of the complaint. On December 10, 1936, Tom W. Willis and wife conveyed to the United States the tract next described in that paragraph. On March 10, 1937, the tract last described was acquired by the Government from R. M. Boyd and wife.

Levy of the taxes.—The rate of state taxes is fixed by section 8 of Act No. 194 (p. 263) at sixty-five cents on each hundred dollars of assessed value. Consequently, the state rate was fixed when the United States acquired the lands. The rate of county taxes was not set until February 8, 1937, after the first two tracts had been acquired. On that day, a levy of seventy-five cents was made by the county board of revenue (Appendix B, p. 42, *infra*). At a county election held June 14, 1937, after all three conveyances,

[2] Unless otherwise noted, all Alabama statutes cited in this brief are provisions of Act No. 194, Ala. Gen. Acts 1935. Therefore, only the particular section, together with the page on which it is found, is cited.

county and district school taxes totaling seventy cents per hundred were voted. The levy of these school taxes was authorized by Art. XIV, sec. 269, and Art. XIX of the Constitution of Alabama.

Assessment of the taxes.—When the United States acquired the lands, the assessed values had not been determined. Assessment began October 1, 1936. Sec. 29, p. 274. The procedure was as follows: First, the county assessor listed (sec. 29) and valued (sec. 50, p. 284) the property. The definitive assessment was made by the county board of review (sec. 72, p. 292), consisting of the members of the county board of revenue and of the assessor (sec. 67, p. 289). The Board met on March 8, 1937 (App. B, p. 42, *infra*). As section 72 declares, it was the board's duty to "review, revise, correct and fix the assessment values made by the assessor by raising or lowering the assessment * * * in such manner as to secure the assessment of property at sixty per cent of its fair and reasonable market value." Having completed its work, the board of review adjourned March 20, 1937 (App. B, p. 43, *infra*). Thereupon, the assessments were open for inspection. Sec. 74, pp. 292–293. The last of the three tracts had been conveyed to the United States on March 10.

Sales of the lands for the taxes.[3]—The delinquent tax docket discloses that the property conveyed by

[3] The facts contained under this head of the Statement were, unless otherwise noted, taken from public records. As

Bridges was assessed at $2,110, that conveyed by Willis at $780, and that conveyed by Boyd at $5,040. The docket further shows that, by application of the tax rates to these assessed values, state, county, and school taxes, respectively aggregating $44.31, $13.22, and $105.84, were imposed.

The taxes were due October 1, 1937, and, not being paid, became delinquent January 1, 1938. Sec. 11, p. 267. However, lands may be sold for taxes only when the collector reports to the court that otherwise he cannot collect the taxes. Sec. 214, p. 351. In the case of each of the Government's vendors, the collector certified to the court that he could not collect the taxes "assessed against the real estate * * * or the owner thereof, without a sale of the said lands" and asked that the court decree a sale for that purpose. Thereupon, the court directed each taxpayer to appear and show cause why a decree of sale should not be made. May 16, 1938, the court decreed that the tract bought from Bridges be sold for the unpaid taxes, $44.31 and costs of $10.66. The same day, it ordered the sale of the Boyd tract for taxes of $105.84 and costs of $12.38. June 12, 1938, a like decree was made in respect of the Willis tract for taxes of $13.22 and $2.19 costs.

Section 230 (pp. 356–357) provides:

> If no person shall bid for any real estate * * * an amount sufficient to pay the sum

---

has been stated, the records in respect of the Bridges tract are set forth in Appendix B (pp. 41–46, *infra*).

> specified in the decree of sale, and the costs and expenses subsequently accruing, the Judge of Probate shall bid in such real estate for the State at a price not exceeding the sum specified in such decree and such subsequently accruing costs and expenses.

At sales held June 12, 1939, the lands were bid in for the State, the Bridges tract for $58.98, the Boyd tract for $118.84, and the Willis tract for $19.51. June 27, 1939, the probate court confirmed the sales and issued certificates of purchase to the State.

By this suit, the United States seeks a decree that the 1937 taxes did not create a lien against the lands described in the complaint and that the certificates of purchase issued to defendant are void. The complaint asserts (par. VI) that the claims of the State to an interest in the lands are invalid as amounting to an attempt to tax property of the United States and as resulting from judicial proceedings in which the United States was made defendant without its consent. The State's answer asserts (pars. 1, 2) that the United States acquired the lands subject to the liens for the 1937 taxes and (par. 2) that, as purchaser upon the tax sales, the State acquired title to the lands subject to the right of the United States to redeem by paying taxes and costs.

SUMMARY OF ARGUMENT

I

When the lands in question were acquired by the United States the amount of the taxes had not been ascertained because the values had not been assessed and the rates of taxation had not been fixed. Therefore the taxes had not then been imposed. Since the property of the United States is not subject to state taxation (*Van Brocklin* v. *State of Tennessee,* 117 U. S. 151, 168, 180), the State was thereafter powerless either to tax the United States or its lands or to make its lands liable in the event the former owners could not be made to pay.

The Alabama lien statute, section 372, Ala. Gen. Acts 1935, No. 194, p. 566, declares that as of October 1, 1936, i. e., before the lands were acquired by the United States, the lands became subject to liens for taxes due October 1, 1937. But section 372 did not *per se* impose upon the lands a liability for taxes. It does not impose taxes but secures their payment and, unless taxes are imposed, has no effect. It provides for a lien which becomes "fixed and final" only when taxes have been ascertained by completion of levy and assessment. *New York* v. *Maclay,* 288 U. S. 290; *In re Opinions of the Justices,* 234 Ala. 358, 363 (1937). Before the liens became fixed, the State was divested of its power to impose a liability upon the lands.

302811—41——2

The lower federal courts, when the question has arisen, have held, as the Government here contends, that the statutory declaration of a lien for taxes imposes no liability upon property conveyed to the United States before the taxes have been ascertained by completion of levy and assessment.

II

The certificates of purchase issued to the State of Alabama are void also because they resulted from judicial proceedings in which the United States was made defendant without its consent. The State of Alabama claims the title to the lands as a result of the decrees entered in those proceedings. It is thus apparent that the United States is the party against which the proceedings were instituted. Since the state court had no jurisdiction over the United States or its property, it could not divest the title of the United States.

ARGUMENT

I

SINCE THE LANDS WERE ACQUIRED BEFORE THE TIME WHEN BY COMPLETION OF LEVY AND ASSESSMENT THE AMOUNTS OF STATE TAXES HAD BEEN ASCERTAINED, THEY ARE NOT SUBJECT TO LIENS FOR THE TAXES

The State of Alabama claims that on October 1, 1936, the three tracts of land became subject to liens for taxes due October 1, 1937. This claim is grounded upon section 372 of Act No. 194, p. 566. So far as material, the section provides:

> From and after the first day of October of each year, when property becomes assess-

> able the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him * * * which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; * * *. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon property are enforced.

The United States contends that it acquired the lands before taxes were imposed and liens perfected and thereafter the State was without power to tax the lands or subject them to liens.

1. On October 1, 1936, the taxes had not been ascertained. In Alabama, as elsewhere, two things are requisite for the ascertainment of an ad valorem tax: (1) The tax rate must be fixed and (2) the property must be valued. See e. g., *Perry County* v. *Railroad Company*, 58 Ala. 546, 559–560 (1877); *Elyton Land Co.* v. *Mayor and Aldermen of Birmingham*, 89 Ala. 477, 480, 481 (1889); *People* v. *Weaver*, 100 U. S. 539, 545–546; 3 Cooley, *Taxation* (4th ed. 1924) secs. 1012, 1015, 1043, 1045, 1135. On October 1, 1936, only the state tax rate (enacted by section 8 of Act No. 194) was fixed. The lands had not been valued and the county and school tax rates had not been

fixed. And when the three tracts were acquired by the United States, the taxes were still unascertained. The assessed values were not definitely determined until March 20, 1937, i. e., after the last acquisition. The county tax was levied February 8, 1937 (after the first two acquisitions) and the school taxes were voted June 14, 1937.

Therefore, it is evident that, for want of ascertainment of their amount, no taxes had been imposed when the United States acquired the lands. In the nature of things, there can be no tax until the amount thereof has been ascertained. *New York* v. *Maclay,* 288 U. S. 290, 292–293; *Kern* v. *Towsley,* 45 Barb. 150, 152 (N. Y. 1865); *Dowdney* v. *Mayor, etc., New York City,* 54 N. Y. 186, 188 (1873); *Hallinger* v. *Zimmerman,* 63 N. J. Eq. 100, 102–103 (1902); *Buckhout* v. *City of New York,* 176 N. Y. 363, 369 (1903); *Territory* v. *Perrin,* 9 Ariz. 316, 320 (1905); *State* v. *Snohomish County,* 71 Wash. 320, 323 (1912); *Gillmor* v. *Dale,* 27 Utah 372, 377 (1904); *State of Texas* v. *Farmer,* 94 Tex. 232, 235 (1900). And if the assessments had not been thereafter determined and the additional levies made, the taxes would never have been imposed. See *Bannon* v. *Burnes,* 39 Fed. 892, 898 (C. C. W. D. Mo. 1889); *Portland* v. *Multnomah County,* 135 Ore. 469, 473 (1931).

The ascertainment of the taxes, i. e., the completion of levy and assessment, after acquisition of the lands by the United States, could not impose any liability upon the lands. The State could still

levy and assess for the purpose of imposing a personal liability on the former owners.[4] But the property of the United States is not subject to state taxation. *Van Brocklin* v. *State of Tennessee*, 117 U. S. 151, 179–180; *Clallam County* v. *United States*, 263 U. S. 341, 345; *Lee* v. *Osceola Imp. Dist.*, 268 U. S. 643, 645.[5] Consequently, the State could not levy and assess in order to tax the United States on account of its ownership of the lands or for the purpose of making the lands primarily liable. *Mullen Benevolent Corp.* v. *United States*, 290 U. S. 89, 94–95. Obviously, therefore, the State could not by completing levy and assessment make the lands secondarily liable, i. e., liable in the event that the Government's grantors could not be made to pay.

---

[4] That the Government's grantors could be taxed on account of their ownership of the lands on October 1, 1936, is indicated by *People* v. *Commissioners*, 104 U. S. 466, 468; *United States* v. *Pierce County*, 193 Fed. 529, 532 (W. D. Wash. 1912); *State* v. *Northwestern Tel. Exchange Co.*, 80 Minn. 17, 21 (1900); *Wood* v. *McCook Water-Works Co.*, 97 Neb. 215, 219 (1914). Cf. *United States* v. *City of Buffalo*, 54 F. 2d 471, 474 (C. C. A. 2, 1931).

[5] Section 6 of the Act of March 2, 1819, c. 47, 3 Stat. 489, 492, authorizing admission into the Union of the State of Alabama, provided that the convention to be called to form a state constitution should "provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said territory, do agree and declare * * * that no tax shall be imposed on lands, the property of the United States". Section 2, Act No. 194, Alabama General Acts, 1935, pp. 256, 257, provides that "all property, real and personal, of the United States" shall be exempt from ad valorem taxation.

2. It is equally plain that the Alabama lien statute, section 372, did not *per se* make the lands liable for taxes. It neither fixes rates of taxation nor enumerates subjects of taxation. It does not impose taxes but secures their payment. Unless taxes are imposed, section 372 accomplishes nothing. As this Court has observed (*Heine* v. *The Levee Commissioners,* 19 Wall. 655, 659): "it is too clear for argument that taxes not assessed are no liens." Necessarily, therefore, the statute contemplates that the steps requisite to the imposition of taxes shall be undertaken, i. e., that taxes shall be levied and values shall be assessed. The declaration that the lien attaches as of October 1, when the procedure of imposing the tax commences, does not do away with the necessity of completing that procedure. Nor will it cure any defect of procedure. See e. g., *Gaston* v. *Reconstruction Finance Corporation,* 237 Ala. 111, 112 (1939); *Lewis* v. *Burch,* 215 Ala. 20, 21 (1926); *Laney* v. *Proctor,* 236 Ala. 318, 320 (1938).

The Supreme Court of Alabama has recognized that levy and assessment are indispensable to imposition of the lien declared by section 372. *In re Opinions of the Justices,* 234 Ala. 358 (1937). The occasion of the opinion was an inquiry from the governor whether section 100 of the state constitution prohibited the exemption of homesteads from state ad valorem taxes due (as were the taxes involved in the case at bar) October 1, 1937. The

exemption was granted in a statute approved February 20, 1937. However, by the terms of section 372, the taxes had been liens since October 1, 1936. Section 100 of the state constitution declares that no "obligation or liability * * * held or owned by this state * * * shall ever be remitted [or] released * * * by the legislature". The court answered that the statute constitutionally exempted homesteads from state taxes due October 1, 1937. It said (p. 363):

> This provision [section 372] for a lien, *of necessity,* is the result only after all statutory requirements of due assessment and adjudication thereon, actually or theoretically, by the reviewing boards have been had, done, or time for review has expired by the operation of law and the county tax levy has been made. *Then does the lien become fixed and final. Until this time the lien and its amount is inchoate.* [Italics added.]

Thus, the Supreme Court of Alabama does not regard section 372 as imposing a liability for taxes. Had it so construed the section, it would have been obliged to hold the exempting statute unconstitutional.

This Court has held that until by completion of levy and assessment taxes have been ascertained, the statutory declaration of a lien serves "merely as a *caveat* of a more perfect lien to come." *New York* v. *Maclay,* 288 U. S. 290, 294. In that case receivers were appointed for a corporation which

owed franchise taxes (not then assessed or liquidated) to the State of New York and income taxes to the United States. The decree of receivership gave the United States a preferred right in the corporate assets. R. S. sec. 3466, 31 U. S. C. sec. 191. After commencement of the receivership, the State assessed and liquidated the franchise taxes. It claimed that by virtue of state statutes the taxes became liens in advance for the years in which they were due "though the amount is not fixed and must be liquidated thereafter" (288 U. S. at 292). This Court rejected the contention. Speaking through Mr. Justice Cardozo, it said (pp. 292–293):

> The lien thus created [by the New York statutes] is effective for many purposes though its amount is undetermined. It is notice to mortgagees or purchasers, who are held to loan or purchase at their own risk if they take their mortgages or deeds before the tax has been assessed or paid. * * * In that respect it is similar to the lien of a transfer tax or duty upon the estate of a decedent. * * * It will even be superior, at all events after assessment * * * to mortgages already made, and will thus prevail against a purchaser who buys at a foreclosure sale. * * * All this is settled in New York by reiterated judgments.
>
> The problem here is different. To hold that a lien has progressed to such a point as to be a warning to mortgagees and purchasers of a contingent liability, like a notice of *lis*

pendens, is far from holding that while the liability is unliquidated and unknown the lien thus created is perfect and specific. By the terms of the hypothesis it is nothing of the kind. If the state were to stand upon the warning and omit to ascertain the debt, it would never be able to sell anything, for it would not know how much to sell. Against mortgagees and purchasers a lien perfected afterwards may take effect by relation as of the date of the inchoate lien through which mortgagees and purchasers became chargeable with notice. The doctrine of relation will not divest the United States of the preference that accrued when receivers were appointed.

Thus, the legislative declaration of a lien for taxes is not the equivalent of or a substitute for the imposition of the taxes. Whatever the terms of the statute declaring the lien, it is ineffective unless and until levy and assessment are completed. Hence, the lands in question were free from tax liens when acquired by the United States. Thereafter, the taxes were imposed. But, because it lacked power to impose any taxes upon the lands of the United States, the State was similarly powerless to impose tax liens upon those lands, or more precisely, to transmute what were "inchoate" into "fixed and final" charges.

3. Numerous decisions establish the correctness of the Government's contention. It has been held, precisely as the Government here contends,

that the statutory declaration of a lien for taxes imposes no liability upon property conveyed to the United States before, by completion of levy and assessment, the taxes have been ascertained. *Bannon* v. *Burnes,* 39 Fed. 892, 897, 898 (C. C. W. D. Mo. 1889); *United States* v. *Pierce County,* 193 Fed. 529, 532–533 (W. D. Wash. 1912); *Territory* v. *Perrin,* 9 Ariz. 316, 320 (1905); see also *United States* v. *City of Buffalo,* 54 F. (2d) 471, 474 (C. C. A. 2, 1931) certiorari denied, 285 U. S. 550; *United States* v. *Certain Lands in City of St. Louis, Mo.,* 29 F. Supp. 92, 96 (E. D. Mo. 1939); 3 Cooley, *Taxation* (4th ed. 1924), sec. 1232, n. 13, pp. 2454–2455; Berg, *The Status of Taxes Relative to Land Acquired by the United States,* 16 Oregon Law Review pp. 340–356 (1937); Note, 48 L. R. A. (N. S.) pp. 708–712 (1914).

United States v. *Pierce County, supra,* was a suit to cancel a purported lien for state, county, school and city taxes upon lands of the United States. A statute of Washington made the taxes liens from March 1; the lands were acquired by the United States in May and July; thereafter, in October, the taxes were levied and thus ascertained. The court entered a decree granting the relief prayed for. It said (193 Fed. at pp. 532–533):

> While I entertain no doubt that it is within the power of the state to treat the entire taxation proceeding as having been taken at some definite date, so far as concerns the

> general mass of property * * *, a different rule must apply to property which, while the taxation proceeding is still incomplete, passes under the dominion and exclusive jurisdiction of the United States. The transfer of title to the United States operates to withdraw the property from all the effects of subsequent state action and subjects it to the sole jurisdiction of the United States. As to such property all incomplete state proceedings must fall. * * * It is too plain for argument that, without an order levying the tax and fixing its rate, no tax could be enforced; and it is equally plain in this case that such order was made several months after the United States acquired this property. That order could not operate against property that had passed under the exclusive jurisdiction of the United States.[6]

Applying the same principles, other decisions hold that a declaration of lien like that of the Alabama statute imposes no liability upon property when, before ascertainment of taxes, the power to tax is lost by reason of acquisition of the property

---

[6] The United States concedes that it does not have exclusive jurisdiction over the three tracts here involved. But this affords no basis for distinguishing the *Pierce County* case. The immunity of federal property from state taxation does not depend upon whether the United States possesses the exclusive jurisdiction provided in Art. I, sec. 8, cl. 17, of the Constitution. See e. g. *Van Brocklin* v. *State of Tennessee*, 117 U. S. 151, 179–180.

by a state or one of its political subdivisions, *State* v. *Snohomish County,* 71 Wash. 320, 322–326 (1912); *Portland* v. *Multnomah County,* 135 Ore. 469, 473 (1931); *City of Laurel* v. *Weems,* 100 Miss. 335, 340–341 (1911), or is lost because the property is disconnected from the territory of the taxing power, *Gillmor* v. *Dale,* 27 Utah 372, 377 (1904); *State ex rel. Hinson* v. *Nickerson,* 99 Neb. 517, 520 (1916), or because the legislature divests the taxing body of power to tax. *Denver* v. *Research Bureau,* 101 Colo. 140, 144 *et seq.* (1937).

Thus, in *State* v. *Snohomish County,* 71 Wash. 320 (1912) the state sued to cancel county tax certificates upon lands purchased by it after the statutory lien date but before the taxes were levied. The statutes involved were those dealt with in *United States* v. *Pierce County,* 193 Fed. 529, and the state court agreed with the federal court. It said (p. 323):

> * * * as the last step in the process of taxation, the board of county commissioners and other taxing authorities in October levy the tax in specific sums. Then for the first time the concept of a tax is fully realized. The fact that the lien of the tax so created is by relation attached to specific property as of the date of the initiation of the process on March 1, cannot do away with the necessity of pursuing the whole statutory proceeding before any tax is created so as to attach as a lien as of that or any date. While the state has power for the purposes

> of the lien to treat the entire proceeding as having been taken at any given time, that fact does not do away with the necessity of any step in the proceeding. It seems self-evident that there can be no valid or effective lien for a tax until there is a valid tax in some specific amount.[7]

It is submitted, therefore, that because the amounts of the taxes had not been ascertained when the United States acquired the lands, the lands were not then liable for taxes; that, since property of the United States is not subject to state taxation, the State of Alabama and its political subdivisions could not by subsequent levies and assessments impose upon the lands liability for taxes in the event that the Government's grantors could not be made to pay; and that the lien for taxes declared by section 372 of Act No.

---

[7] On the other hand, the statutory lien is held effective as to property which, after the lien date but before completion of assessment and levy, is acquired by a religious body exempted from taxation. *McHenry Church* v. *McNeal*, 86 Miss. 22, 26 (1905); *The People* v. *Ladies of Loretto*, 246 Ill. 403, 405 (1910); *Board of County Com'rs* v. *Central Baptist Church*, 136 Okla. 99, 100–102 (1929). These decisions are put on the ground that the lien date fixes the taxable status and that the exemption statute, which is to be strictly construed, does not apply to property acquired after it becomes subject to taxation. In other words, the question there involved is the extent to which the State has relinquished its admitted power to tax. See *United States* v. *City of Buffalo*, 54 F. 2d 471, 474 (C. C. A. 2, 1931); *City of Laurel* v. *Weems*, 100 Miss. 335, 339–340 (1911); Berg, *The Status of Taxes Relative to Land Acquired by the United States*, 16 Oregon Law Review, pp. 340, 351–352.

194, Ala. Gen. Acts 1935, was inchoate when the United States acquired the lands and thereafter could not be perfected.

Accordingly, it is submitted that the relief prayed for in the complaint should be granted.

II

THE PROBATE COURT OF MACON COUNTY, ALABAMA, WAS WITHOUT JURISDICTION TO DECREE THAT THE LANDS OF THE UNITED STATES BE SOLD TO PAY THE TAXES

The certificates of purchase issued to the State of Alabama are void also because they resulted from judicial proceedings in which the United States was made a defendant without its consent. No suit can be brought against the United States or—what amounts to the same thing—against its property, without the consent of Congress. *The Siren,* 7 Wall. 152, 154. As this Court has recently pointed out, "A proceeding against property in which the United States has an interest is a suit against the United States." *Minnesota* v. *United States,* 305 U. S. 382, 386. Admittedly, Congress did not consent to the proceedings instituted in the Probate Court of Macon County, Alabama.

Of course, the United States was not *named* as a party defendant. Rather, as the Statement discloses (p. 5), the probate court issued orders calling upon those who had no interest in the lands, the former owners, to show cause why decrees should not be entered to sell the lands for taxes. But whether the United States is actually

sued is not determined by the nominal parties to the controversy but by the effect of the judgment which can be entered. Thus, a suit is against the United States when those named as defendants have no pecuniary interest in the matter and the United States, though not named, is the real party against which the relief is asked and the judgment will operate. *Cunningham* v. *Macon & Brunswick R. R. Co.*, 109 U. S. 446, 457; *Hagood* v. *Southern*, 117 U. S. 52, 67–69; *Belknap* v. *Schild*, 161 U. S. 10, 21–22, 23–25; *Stanley* v. *Schwalby*, 162 U. S. 255, 272; *Minnesota* v. *Hitchcock*, 185 U. S. 373, 386–387; *Oregon* v. *Hitchcock*, 202 U. S. 60, 69–70; *Naganab* v. *Hitchcock*, 202 U. S. 473, 475–476; *Louisiana* v. *Garfield*, 211 U. S. 70, 77–78; *Goldberg* v. *Daniels*, 231 U. S. 218, 221–222; *New Mexico* v. *Lane*, 243 U. S. 52, 58. Obviously, the former owners had nothing at stake in the probate court proceedings. The United States is the party against whom the decrees operated. The validity of the asserted liens depended upon contentions that it was to the interest of the United States alone to raise. It is apparent, therefore, that the United States was the real party defendant and that, because it could not be sued, the probate court was without jurisdiction.

To summarize: The proceedings were instituted for the purpose of selling the lands to which the United States had title. As a result of the decrees entered in those proceedings, the State of

Alabama claims the title. Plainly, the proceedings by which this was accomplished were against the United States. Therefore, it is evident that the claims of the State are invalid. It goes without saying that a court which has no jurisdiction over the United States or over its property cannot divest the United States of title or transfer its property to another.

It is submitted that the certificates of purchase issued to the State of Alabama are nullities and that this Court should order them to be cancelled.[8]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that a decree should be entered (1) declaring and adjudging that the 1937 tax assessments did not create a lien against the lands described in the complaint, (2) quieting plaintiff's title to said lands and declaring void the tax certificates issued

[8] It will be noted, however, that cancellation of the certificates on the ground that they resulted from judicial proceedings in which the United States was made defendant without its consent will not afford the United States the complete relief asked for in its complaint. It is necessary also that the liens be adjudged invalid. Even though unenforceable while the lands belong to the United States, the liens may continue and so be enforceable against a subsequent owner of the property. *The Siren*, 7 Wall. 152, 155, 157. So far as the Government knows, the Alabama courts have not held otherwise. Even a possibility that the liens, if valid, would be enforceable against the lands if owned by one not immune from suit would hinder a disposition of the lands by the United States and thus constitute a cloud upon its title. See *United States* v. *City of Buffalo*, 54 F. 2d 471 (C. C. A. 2, 1931).

to the defendant, (3) enjoining defendant, its officers and assigns, from asserting any claim to said lands adverse to plaintiff or its successors in title, and (4) granting such further relief as this Court may deem proper and necessary.

ROBERT H. JACKSON,
Attorney General.
FRANCIS BIDDLE,
Solicitor General.
NORMAN M. LITTELL,
Assistant Attorney General.

MARCH 1941.

APPENDIX A

1. Act No. 194, General Acts Alabama 1935, p. 256, provides:

* * * * *

SECTION 8. There is hereby levied for the purpose and upon the property hereinafter named and not specifically exempted from taxation, annual taxes, as follows, to-wit: (a) For the maintenance of the public schools of this State, thirty cents ($.30) on each one hundred dollars ($100.00) of the assessed value of taxable property. (b) For the relief of needy Confederate soldiers and sailors, resident citizens of Alabama, and their widows, ten cents ($.10) on each hundred dollars ($100.00) of the assessed value of taxable property. (c) For the use of the State and to raise revenue therefor, twenty-five cents ($.25) on each one hundred dollars ($100.00) of the assessed value of taxable property [p. 263].

* * * * *

SECTION 11. All taxes, unless otherwise provided by law shall become due and payable on the first day of October in each year, and shall become delinquent if not paid before the first day of January succeeding, * * * [p. 267].

* * * * *

SECTION 29. The return and listing of property, for taxation by the Tax Assessor must commence on the first day of October in every year, and sh[illegible] be finished by him on the first day of [illegible]uary following; but the Assessor may be allowed through the

third Monday in January in each year to make a supplemental return or list of property which he may have failed to have returned or listed prior to the first day of January, * * * [p. 274].

* * * * *

SECTION 50. When the assessor shall have completed his work of assessing, valuing and equalizing property, which has been listed for taxation in his county and such valuation shall have been entered on the assessments lists, which shall not be later than the last Monday in February of each year, he shall certify over his signature to the correctness of the returns, showing valuations fixed by him, * * *. Such lists of property shall be by the assessor delivered to the Board of Review not later than the second Monday in March [p. 284].

* * * * *

SECTION 64. The Court of County Commissioners or other court of like jurisdiction, at the regular February term in each year, shall levy the amount of general taxes required for the expenses of the county for the current year, not to exceed one-half of one per cent of the value of the taxable property as assessed for revenue for the State as shown by the book of assessments after it shall have been corrected, and at the same time levying the amount of special taxes required for the county for the current year, which levy shall be made upon the same basis of valuation provided above and when such levy shall be made, to certify the rate or rates of taxation, and the purpose or purposes for which the tax is levied to the Tax Assessor of the County [p. 288].

* * * * *

SECTION 67. The members of the courts of county commissioners or Boards of revenue,

other than the judge of probate, of the several counties of the State, together with the tax assessor of such counties are hereby constituted a board of review, whose duty it shall be to inspect, review, revise, and fix the value of all the property returned to or listed with the tax assessor for taxation each year; * * *. The majority of the Board of Review shall constitute a quorum of such board for the performance of the duties required herein; * * * [p. 289].

* * * * *

SECTION 72. When the assessor shall have completed the assessment, valuation and equalization work in his county as provided in this Act, he shall notify each member of the Board of Review and such board shall meet on the second Monday in March and sit at the courthouse of the county from day to day until their duties are completed, which shall not be later than the first Monday in April, and shall review, revise, correct and fix the assessment values made by the tax assessor by raising or lowering the assessment of any person, partnership, corporation or association, except such assessments as have been approved by the State Tax Commission, as to any or all of the items of his assessment, in such manner as to secure the assesment of property at sixty per cent of its fair and reasonable market value. The majority of a board of review shall govern in fixing the value for assessment of all property before them for determination.

SECTION 73. It shall be the duty of the Board of Review to meet on the second Monday in March and sit as long as may be necessary to carefully examine and inspect all tax returns and assessments delivered to it by the county tax assessor. If the board

finds that any taxpayer has neglected to make a return or has omitted from his return any property that should be returned, it shall be its duty to make up a return upon the proper blank, with a description of the property to be assessed, which property it shall then proceed to value and equalize in the same manner as other property is valued and equalized by it, and to the value thus placed thereon shall be added a penalty of ten percent for failure of the owner of such property to properly return the same. * * * [p. 292].

SECTION 74. Immediately upon the completion of the work of reviewing and adjusting assessed valuations under the provisions of this Act, the tax assessor shall give notice by publication once a week for two consecutive weeks in a newspaper published in the county, and if no newspaper is published in the county, by posting notices in three public places in each precinct of the county, that the assessed valuations of all property listed for taxation have been fixed as provided by law and that the tax return list showing thereon such assessed valuations are in his office and open for public inspection, and that the Board of Review will sit at the courthouse of the county, on the first Monday in June to consider such protests as may be filed by any taxpayer as herein provided, and that any taxpayer who is not satisfied with the valuations of his property as fixed and entered on the return list as required herein, may file objections in writing to such assessed valuations with the secretary of said board, on or before the last Monday in April, and the taxpayer shall set out in such objections filed, the description of each item of property and his reason for making ob-

jections to the assessed valuation as placed thereon [pp. 292–293].

* * * * *

SECTION 214. The probate court of each county is empowered to order the sale of lands therein for the payment of taxes assessed on such lands, or against the owners thereof, when the tax collector shall report to the court that he was unable to collect the taxes assessed against such land, or any mineral, timber, or water right or special right, or easement therein, or the owner thereof, without a sale of such land [p. 351].

SECTION 215. It shall be the duty of the tax collector, at the expense of the county, to procure a substantially bound book in which he shall enter, in the manner usual in docketing causes for trial in the circuit court, each parcel of real estate, or right or interest, or easement therein, assessed to any person against whom taxes have been assessed which are not paid, when a portion of all such taxes are on such real estate, or right or interest or easement therein, describing the same in the same manner as it is described in the assessment list, and stating the amount of the unpaid taxes, penalties, fees and charges due by such person, specifying the amount due the State, and due the county, and to special tax districts, and that for fees and charges; and he shall in like manner, enter in such book each parcel of real estate, or right or interest or easement therein, which has been assessed to an "owner unknown" the amount of taxes, fees and charges due thereon, stating in each case the fact that it was so assessed * * * [pp. 351–352].

SECTION 216. * * * Such book[s] shall be delivered to the judge of probate

on or before the first day of March, but if from any cause there has been a failure to deliver the same by that time, it may be delivered thereafter [p. 352].

SECTION 217. (a) On receiving such book as speedily as practicable the Judge of Probate shall issue a notice addressed to each person against whom any unpaid taxes are assessed as shown by such book, substantially in the following form: "State of Alabama, (give name of county) county, to (give name of taxpayer): The Tax Collector has filed in my office a list of delinquent taxpayers, and of real estate upon which taxes are due. You are reported as delinquent, and your tax amounts to (here give amount of taxes) with costs added. This is to notify you to appear before the probate court of said county at the next term thereof, commencing on Monday, the —— day of ———, 19—, then and there to show cause, if any you have, why a decree for the sale of property assessed for taxation as belonging to you, should not be made for the payment of the taxes thereon, and fees and costs (Here Probate Judge's signature). Judge of Probate." Such notice must be served by the Tax Collector, or his deputy, on the person to whom it is addressed, and service of such notice may be made by handing a copy thereof to the party to whom it is addressed, or his agent, or by leaving a copy thereof at the residence or place of business of such party, or his agent, or by sending a copy of said notice to the party to whom it is addressed, by registered mail, postage prepaid, marked "for delivery only to the person to whom addressed," and return receipt demanded addressed to the Tax Collector of the county; and with his endorsement thereon, showing how and when served, show

his reason for not serving the same, it must be by the Collector, or his deputy, returned into Court on or before the first day of the next term thereof * * * [pp. 352–353].

* * * * *

SECTION 223. If service of such notice is perfected ten days before the commencement of the term to which the same is returnable, the cause shall stand for trial at such term; and if no defense is interposed or if interposed and on trial thereof the same is adjudged insufficient in law or is not sustained by the evidence adduced, the Probate Court shall make and enter on such book or docket, a decree of sale substantially in the following form: "It appearing to the Court that the taxes have been assessed against the person mentioned in this cause (or if the assessment is to owner unknown that the taxes have been assessed on real estate mentioned in this cause) to the amount of (state amount here) dollars for the year ——, and that the same are still due and unpaid; and it further appearing that notice of this proceeding has been given as required by law, and no valid defense has been interposed against the sale of such real estate for the payment of the taxes. It is therefore ordered, decreed * * * and adjudged by the Court that the State of Alabama has a lien for the payment of said amount and for the additional sum of (state amount here) dollars, for fees, charges and costs in this behalf lawfully incurred, on the following described real estate, to-wit: (Here insert description of real estate). It is further ordered, adjudged and decreed by the Court that said real estate or so much thereof as may be necessary be sold for the payment of said delinquent taxes, and of

said fees, charges and costs, and of the expenses of such sale." Such decree when entered shall be signed by the Judge of Probate and shall have, when the jurisdiction of the court is shown, the effect of judgments in other cases in courts of record [pp. 354–355].

SECTION 224. Immediately at the end of any term of court at which any decree for sales of real estate for the payment of taxes are rendered, or as soon thereafter as practicable, the tax collector shall proceed to enforce such decree by sales of real estate ordered to be sold, and to this end shall give notice for thirty days before the day of sale, by publication for three successive weeks in some newspaper published in the county, or at least three (3) weeks before the day of sale shall post a notice at the courthouse of his county, and at some public place in the precinct in which the real estate is situated, that at the time specified therein, he will proceed to sell such real estate separately, describing such portions as are embraced in each decree, and stating the amount for which each decree was rendered (without stating the items of which said decree is composed) and the person against whom the taxes embraced in such decree were assessed, or if assessed to "Owner unknown", stating that fact * * * [p. 355].

SECTION 225. Within ten days after such sale the Tax Collector shall make report of each sale to the Probate Court and praying confirmation thereof. Such report shall lie over for a period of five days for exceptions or objections thereto. If upon the expiration of five days no objections have been filed, or if in the opinion of the Court they are insufficient, and it appear-

ing to the Court that the Tax Collector sold such real estate in accordance with the law, and the decree of Court ordering such sale, the Court shall make and enter an order confirming said sale, which shall be entered on the same book or docket as the original decree of sale, and ordering the Tax Collector to issue proper certificates of purchase to the various purchasers, including the State [pp. 355–356].

* * * * *

SECTION 230. If no person shall bid for any real estate offered at such sale an amount sufficient to pay the sum specified in the decree of sale, and the costs and expenses subsequently accruing, the Judge of Probate shall bid in such real estate for the State at a price not exceeding the sum specified in such decree and such subsequently accruing cost and expenses. In no event shall the Judge of Probate bid in for the State less than the entire amount of real estate included in any assessment [pp. 356–357].

SECTION 231. As soon after the confirmation of sale is made as may be practicable, the Tax Collector must make out and deliver to each purchaser, other than the State, a certificate of purchase, which shall contain a description of the real estate sold and show that the sum was assessed by the Assessor, to whom assessed, the date of assessment for what year or years the taxes were due, the amount of taxes thereon, distinguishing the amount due the State and County, and for school purposes, and the fees and costs; that it was advertised and how long, and that it was offered for sale, and at what time, and who became the purchaser, and at what price, and the fact

and date of the confirmation of such sale [p. 357].

SECTION 232. For the real estate bid off for the State in each case the Judge of Probate shall make out a certificate of purchase to the State of like import to the one provided for in the preceding section, and deliver the same to the Tax Collector who shall, on final settlement, deliver all certificates received by him from the Judge of Probate to the State Comptroller, * * *. The Comptroller when he has settled the accounts of the Tax Collector shall deliver to the State Land Commissioner all certificates of land bid in for the State which have been accepted by him, and said Land Commissioner shall cause the same to be recorded in a book kept in his office for that purpose and properly indexed for convenient reference. Lands bid for the State shall not thereafter be assessed except as herein provided until the same have been redeemed or sold by the State [p. 357].

* * * * *

SECTION 235. The certificate of purchase delivered by the Tax Collector to the purchaser at such sale or to the State in case the State is the purchaser, is assignable in writing or by endorsement, and if the State is the purchaser such assignment shall be made by the State Land Commissioner upon the payment of the amount bid by the State, with interest thereon at the rate of six per cent per annum from the date of sale to the date of assignment, plus all taxes due on said lands since the date of sale, with interest thereon at six per cent from date of maturity. Such assignment shall vest in the assignee and his legal representatives all the right and title of the

original purchaser, or of the State in case the State is a purchaser [p. 358].

* * * * *

SECTION 251. When lands are bid in for the State at tax sales the State shall be entitled to possession of said lands immediately upon execution of the certificate of sale by the Judge of Probate. If possession be not surrendered within six months from the date of sale, after demand therefor is made by the State Land Commissioner in behalf of the State, or if the certificate has been assigned, by the assignee, then the State Land Commissioner in the name of the State or the assignee of the State, if the certificate has been assigned, may maintain an action in ejectment, unlawful detainer, or a statutory real action in the nature of ejectment, or other proper remedy for the recovery of the possession of the lands purchased at such sales, and shall be entitled to hold the possession thereof on recovery. * * * [p. 363].

* * * * *

SECTION 268. Real estate which hereafter may be sold for taxes and purchased by the State may be redeemed at any time before the title passes out of the State, or if purchased by any other purchaser, may be redeemed at any time within three years from the date of the sale by the owner, his heirs or personal representatives, or by any mortgagee or purchaser of such lands, or any part thereof, or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common, including a judgment creditor, or other creditor having a lien thereon, or on any part thereof; * * * [pp. 368–369].

SECTION 269. (a) In order to obtain the

redemption of land from tax sales, where the same has been sold to the State, the party desiring to make such redemption shall deposit with the judge of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest thereon at the rate of six per cent per annum from the date of sale, together with the amount of all taxes found to be due on such lands since the date of sale; as provided herein, with interest thereon at the rate of six per cent per annum from the maturity of such taxes, and all costs and fees due to officers as set out in the following sections. (b) Upon application to the probate judge to redeem land where the same has been sold to the State for taxes, which application shall be made on blank forms furnished by the State Land Commissioner, the probate judge shall submit such application to the Tax Assessor of the county in which the land sought to be redeemed is located and the Assessor shall, without delay, enter on such application an assessment value for each of the years for which taxes are due, subsequent to the year for which such land was sold to the State for taxes, and such assessment value shall be sixty percent of the fair and reasonable market value of such lands as of October 1st of the year or years subsequent to the year for which the land was sold for taxes. (c) The redemptionor shall deposit with the probate judge the amount of money for which lands were sold for taxes plus the amount of money due for subsequent years based on the assessment value as required to be fixed in sub-section (b) of this Section and interest, cost and fees as provided in sub-section (a) of this Section [p. 369].

* * * * *

SECTION 279. * * * when three years shall have elapsed from the date of sale, such portions of lands as have not been redeemed shall be subject to sale by the State; and the State Land Commissioner with the approval of the governor, may sell the same at private sale to any purchaser, who may pay therefor in cash to the treasurer, such sum of money as the State Land Commissioner may ascertain to be sufficient to cover and satisfy all claims of the State and county, which sums shall not be less than the amount of money for which the lands were bid in by the State, with interest thereon at the rate of six per cent per annum from the date of sale, together with the amount of all taxes due on said lands since date of sale, with interest thereon at the rate of six per cent per annum from the maturity of such taxes. Provided, that if lands have not been redeemed or sold by the State five years from date of sale, such lands may be sold by the State Land Commissioner as hereinafter provided [p. 373].

* * * * * *

SECTION 281. When real estate which has heretofore been sold for taxes and bought in by the State and the period of redemption has expired the State Land Commissioner with the approval of the Governor, may sell all the right, title and interest of the State to such real estate at the best price obtainable and upon such terms as he may determine, Provided, such amount shall not be less than the taxes due thereon for a period of three years, without interest, costs or penalties. (b) Provided, However, that where real estate has been sold for taxes and bid in for the State and not redeemed within five years from date of sale the State Land Commissioner shall have the right to

sell the right, title and interest of the State to such real estate at the best price obtainable, irrespective of the amount of taxes due, and upon such terms as he may determine * * * [p. 374].

SECTION 282. When lands have been sold by the State, as provided in Sections 279 and 281, and the purchase money has been paid, the State Land Commissioner, in behalf of the State, shall execute to the purchaser a deed, duly acknowledged, without warranty or covenant of any kind on the part of the State, express or implied conveying to him all the right, title and interest of the State in and to the lands purchased by him; and such purchaser shall thereafter have all the right, title and interest of the State, in and to such lands, and shall be held, and treated as the assignee of all the taxes due upon such lands, or for which they were sold, and the penalties and all of the taxes that should have been under the law assessed upon the same, if they had been the property of a private citizen of the State, and he shall be clothed with all the rights, liens, powers and remedies, whether as a plaintiff or defendant, respecting said lands as an individual purchaser at the tax collector's sale would have in similar circumstances; and all such liens and charges as the State had before such sale by the State Land Commissioner shall be enforced in favor of such purchaser from him, as under the provisions of law relating to individual purchasers at sales by the tax collector, such purchaser on failure of his title shall have his lien and charges assessed by the court or by a jury and may foreclose the same by proceeding at law in such suit [pp. 374–375].

* * * * *

SECTION 284. Any lands which have been bid in by the State at tax sale shall, after three years have elapsed from the date of sale to the State and no person having any interest therein having redeemed same from tax sale, be subject to conveyance to the State Commission of Forestry * * * [pp. 375–376].

* * * * *

SECTION 289. The right to redeem any real estate bid in for the State shall be forfeited unless such real estate is redeemed within the time prescribed by this act, and if not redeemed within that time, all the right, title and interest of the owner of such real estate, and of the person whose duty it was to pay the taxes thereon, in and to such real estate, shall be transferred to and absolutely vested in the State [p. 377].

* * * * *

SECTION 372. From and after the first day of October of each year, when property becomes assessable the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property real or personal assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named and each of such liens

may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon property are enforced [p. 566].

2. Article XIV, Constitution of Alabama, provides:

SEC. 269. The several counties in this state shall have power to levy and collect a special tax (a) not exceeding ten cents on each one hundred dollars of taxable property in such counties, for the support of public schools; provided, that the rate of such tax, the time it is to continue, and the purpose thereof, shall have been first submitted to a vote of the qualified electors of the county, and voted for by three-fifths of those voting at such election; but the rate of such special tax shall not increase the rate of taxation, state and county combined, in any one year, to more than one dollar and twenty-five cents on each one hundred dollars of taxable property; excluding, however, all special county taxes for public buildings, roads, bridges, and the payment of debts existing at the ratification of the constitution of eighteen hundred and seventy-five. The funds arising from such special school tax shall be so apportioned and paid through the proper school officials to the several schools in the townships and districts in the county that the school terms of the respective schools shall be extended by such supplement as nearly the same length of time as practicable; provided, that this section shall not apply to the cities of Decatur, New Decatur, and Cullman [Code of Alabama, 1923, Vol. 1, pp. 409–410].

3. Article XIX, Constitution of Alabama, provides:

SEC. 1. The several counties in the State shall have power to levy and collect a special county tax not exceeding thirty cents on each one hundred dollars worth of taxable property in such counties in addition to that now authorized or that may hereafter be authorized for public school purposes, and in addition to that now authorized under Section 260 [269] of Article XIV of the constitution; provided, that the rate of such tax, the time it is to continue and the purpose thereof shall have been first submitted to the vote of the qualified electors of the county, and voted for by a majority of those voting at such election.

SEC. 2. The several school districts of any county in the State shall have power to levy and collect a special district tax not exceeding thirty cents on each one hundred dollars worth of taxable property in such district for public school purposes; provided, that a school district under the meaning of this section shall include incorporated cities or towns, or any school district of which an incorporated city or town is a part, or such other school districts now existing or hereafter formed as may be approved by the county board of education; provided further, that the rate of such tax, the time it is to continue and the purpose thereof shall have been first submitted to the vote of the qualified electors of the district and voted for by a majority of those voting at such election; provided further, that no district tax shall be voted or collected except in such counties as are levying and collecting not less than a three-mill special county school tax.

SEC. 3. The funds arising from the special county school tax levied and collected by any county shall be apportioned and expended as the law may direct, and the funds arising from the special school tax levied in any district which votes the same independently of the county shall be expended for the exclusive benefit of the district, as the law may direct. [Added by Amendment III, proclaimed November 22, 1916, Code of Alabama, 1923, Vol. 1, p. 429.]

APPENDIX B

1. Minutes of the Meeting of the Macon County Board of Revenue, February 8, 1937:

Under and by virtue of the Legislature of 1923, Revenue Laws page 93, Section 148, it is ordered that the rate of taxation promulgated for 1937 by the Board of Revenue shall be as follows:

The amount of general County taxes required for expenses of the County for the current year shall be ½ of 1% or 50 cents on each one hundred dollars, taxable property for revenue for County as shown by the books of Assessment after it shall be corrected.

Also the amount of Special taxes for County for current year 1937 shall be 2½ mills on taxable property as levied, making County rate to read 5 mills or 50 cents on each $100.00 for General County purposes and 2½ mills or 25 cents on each $100.00 for Special County tax purposes.

---

2. Minutes of the Meeting of the Macon County Board of Review, March 1937.

The Board of Review of Macon County met in annual session on March 8, 1937 to examine the books of tax assessment and equalize values.

J. L. Youngblood of District 1 was again named Chairman, the other members being

I. D. Vail of District 2, A. J. Segrest of District 3, and W. A. Humphries of District 4.

After comparison of assessments with the land and lot books, all assessments in the ten beats and in the corporations were approved except 71 cases. The Assessor was instructed to put the required publication of notice to tax payers in the County paper, and the registered notices to be mailed to the property owners whose values were changed by the Board, on the forms prescribed by the State Tax Commission.

The sheets filed in alphabetical and numerical order in the prescribed book of notice to the taxpayer, and in the same order in the docket book of notice of protest to valuation and final valuation by the Board of Revenue to show the names and properties and figures of those cited.

A number of the cases cited were for the inclusion of tracts sold to U. S. Government after October 1, which the owners had desired to leave off for this tax year, but which the status on October 1 required being included in assessments for this year.

This session covered a period of two weeks, and at the conclusion of the required examination and changes in valuations, adjournment was made on March 20th.

H. E. HENDON,
Secretary.

---

3. Tax Collector's Notice of Sale of Land for Taxes:

STATE OF ALABAMA
Macon County.

Under and by virtue of the decree rendered by the Probate Court of said county at the May term of said Court, I will proceed

to sell to the highest bidder for cash before the Court house door at Tuskegee, Alabama, within the legal hours of sale Monday, June the 12, 1939 the following described real estate for the taxes and costs due thereon for this year 1938, to wit:

C. C. and J. E. Bridges, SE¼ of SE¼, Sec. 35, T. 18, R. 24. SW¼ of SW¼. 10 A in W side of SE¼ of SW¼, Sec. 36, T. 18, R. 24. 1 Tenant house. E½ of NE¼, E½ of SE¼, Sec. 2, T. 17, R. 24. 174 A strip off W side of W½ lying N and S. 1 Tenant house, Sec. 1, T. 17, R. 24. Tax $51.40.

(Copy from "The Tuskegee News.")

---

4. Order to Show Cause Why Property Should Not Be Sold for Taxes:

THE STATE OF ALABAMA
Macon County.

To C. C. & J. E. BRIDGES
Notasulga, Ala.

The Tax Collector has filed in my office a list of delinquent tax payers of real estate upon which taxes are due. You are reported as delinquent, and your taxes amount to $47.02 . . . with cost added. This is to notify you to appear before the Probate Court of said County at the next term thereof, commencing on Monday, the 2nd day of May 1938, then and there to show cause, if any you have why a decree for the sale of said property assessed for taxation as belonging to you should not be made for the payment of the taxes thereon,

and fees and costs. Given under my hand, this ------ day of APR. 5, 1938 ------ 19----.

WM VARNER
Judge of Probate.

Endorsed on reverse side:
I have executed notice to J. E. BRIDGES, Apr. 7/38.
By Self

A. H. HOWARD
Tax Collector.

---

5. Certificate of Land Sold and Bought by the State:

The STATE OF ALABAMA,
Macon County, Office of Judge of Probate.

I, Wm. Varner, Judge of Probate of said County, hereby certify that the following real estate, lying in said County, to-wit:

SE¼ of SE¼, Sec. 35, T. 18, R. 24, SW¼ of SW¼ 10 A in W side SE¼ of SW¼, Sec. 36, T. 18, R. 24, 1 tenant house. E½ of NE¼, E½ of SE¼, Sec. 2, T. 17, R. 24, 174 A strip off W side of W½ lying N and S 1 tenant house, Sec. 1, T. 17, R. 24,

was assessed by the Tax Assessor of said County to C. C. and J. E. Bridges for the State and County Taxes for the year 1937; that the said taxes became delinquent, and an application, of which due notice was given, was regularly made to the Probate Court of said County for a decree for the sale of said land for the payment of the taxes and charges due thereon; that a decree was rendered by said Probate Court on the 16 day of May 1938, for the sale of said land as prescribed by law, and after

having given notice of sale by posting same at the court house door of said County, and in the precinct where said land lies, at least three weeks before the day of sale, or by advertisement, for three consecutive weeks in the The Tuskegee News, a newspaper published in said County, at least thirty days before the day of sale, in pursuance of said decree and notice of sale, said land was, on the 12 day of June 1939 offered for sale at public auction, at the court house of said County, between the hours of 10 a. m. and 4 p. m. of said day, and at said sale no person having bid for such land an amount sufficient to pay the taxes, cost and fees due thereon, I, as such Judge of Probate, bid in such land for the State of Alabama for the amount of such taxes, costs and fees, aggregating the sum of Fifty-eight dollars and ninety-eight cents, made up of the following items, to-wit;

State-General Tax	$5. 28	School Dis. Tax— No. —	-----
State-Soldiers' Tax	2. 11	School Dis. Tax— No. —	-----
State-School Tax	6. 33	Total County and Dis. School Taxes	14. 77
Total State Taxes	13. 72	Interest on County and Dis. School Taxes	1. 34
Interest on State Taxes	1. 23	Probate Judge's Fees	1. 00
County-General Tax	10. 55	Tax Assessor's Fees	. 50
County-Special Tax	5. 27	Tax Collector's Fees	1. 00
Total County Taxes	15. 82	Total Officers' Fees	2. 50
Interest on County Taxes	1. 44	Advertising-Cost of	8. 16
County-School Tax	$8. 44		
School Dis. Tax No. —	6. 33		

Grand Total, $58.98

Given under my hand this the 29 day of June 1939.

WM VARNER
Judge of Probate.

BLANK PAGE

Tax Collector.

The State of Alabama, Macon County. Decree. Probate Court May Term 1938.

Present, Hon. Wm. Varner, Judge of Probate.

Whereas, it appears from the delinquent tax docket delivered to the Probate Court of said County by the Tax Collector in and for said County that taxes to the amount of $44.31 have been assessed against the lands of the owner or (owner unknown), name of owner shown above, said real estate described above and marked Exhibit "A," for the year 1937;

Whereas, it appears from the certificate of the said Tax Collector that he was unable to collect the said taxes assessed against the real estate described above and marked Exhibit "A," or the owner thereof, without a sale of the said lands;

It Is Therefore Ordered, Adjudged and Decreed by the Court that the 2 day of May 1938, be and the same is hereby set as the day to hear the said cause, being the first day of the May term of said Court, and that notice be given the said owner (or owner unknown), as shown above, of this proceeding and the day set to hear the same, and that said notice be served and perfected ten days before the first day of said term.

Done this the 5 day of Apr. 1938.

Wm. Varner, *Judge of Probate.*

Notice Issued By Judge of Probate

This 5 day of April 1938.

Wm. Varner, *Judge of Probate.*

I have executed Notice to above.
By Self.
For 15 days before this day dated June 12, 193....
A. H. Howard, *Tax Collector.*

The State of Alabama, Macon County. Probate Court ..... Term 193....

Present, The Honorable Wm. Varner, Judge.

It appearing to the Court that taxes have been assessed against the person mentioned in this cause (or, if the assessment is to an "owner unknown" that taxes have been assessed on the real estate mentioned in this cause), to the amount of Forty-four & 31/100 Dollars for the year 1937 and that the same are still due and unpaid; and it further appearing that notice of this proceeding has been given as required by law, and no valid defense has been interposed against the sale of such real estate for the payment of said taxes. It is, therefore, ordered, decreed and adjudged by the Court, that the State of Alabama, has a lien for the payment of said amount and for the additional sum of Ten & 66/100 Dollars for fees, charges and costs in this behalf lawfully incurred on the described real estate, to-wit: hereon above described which is marked Exhibit "A," and made a part hereof the same as if written herein.

It is further ordered, adjudged and decreed by the Court that said real estate, or so much thereof as may be necessary, be sold for the payment of said delinquent taxes, and of said fees, charges and costs, and of the expenses of such sale.

Done this the 16 day of May 1938. Wm. Varner, *Judge of Probate.*

Sale cont'd to Aug. 1, 1938. Aug. 1, 1938, sale cont'd

To The Hon. Probate Court:

I, A. H. Howard, Tax Collector, respectfully certify and report.

That after giving notice for thirty days by publication for three successive weeks in Tuskegee News a newspaper published in this County as provided for by law, I on the 12 day of June 1939 within the hours of legal sale in front of the door of the Court House of this County did in accordance with the law and decree of this Court sell at public outcry the lands described and ordered to be sold and at this sale State of Alabama became the purchaser at and for the sum of $58.98.

That all notices required by law were given and said sale was regular in all respects.

Wherefor, I pray a Confirmation of this sale.

This the 12 day of June 1939.

A. H. Howard, *Tax Collector.*

It is ordered that the report of sale of the Tax Collector lie over for a period of five days for exceptions or objections thereto.

This the 16 day of June 1939.

Wm. Varner, *Judge of Probate.*

The State of Alabama, Macon County. Probate Court June Term 1939.

It appearing to the satisfaction of the Court that the Tax Collector did on the 12 day of June, 1939, make the sale, ordered, adjudged and decreed in this cause and that The State of Alabama became the purchaser at said sale. The property sold for the sum of Fifty-eight & 98/100 Dollars. And it appearing to the satisfaction of the Court that the Tax Collector within ten days thereafter did make a report of said sale to this Court and prayed confirmation thereof and that said report did lie over for a period of five days for exceptions or objections thereto and that upon the expiration of said five days no objections were filed thereto. And it further appearing to the satisfaction of the Court that the Tax Collector sold said real estate in accordance with the law and the decree of this Court ordering such sale.

It is therefore ordered, adjudged and decreed that said sale be and is hereby confirmed and the Tax Collector or Probate Judge be and is hereby ordered to issue proper certificates of purchase to the purchaser.

Done this the 27 day of June 1939.

Wm. Varner, *Judge of Probate.*